

NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 617
SENATE BILL 702

AN ACT AUTHORIZING AN ELECTION IN MECKLENBURG COUNTY TO
DETERMINE WHETHER MIXED BEVERAGES MAY BE SOLD BY THE
DRINK UNDER RULES AND REGULATIONS PROMULGATED BY THE
COUNTY BOARD OF ALCOHOLIC CONTROL.

The General Assembly of North Carolina do enact:

Section 1. Definitions. – The following terms used in this act are defined to be and to mean that which is set forth below, unless the context clearly indicates that another meaning is intended.

(a) Alcoholic Beverages, as used in this act, is defined to be and to mean alcoholic beverages of any and all kinds which shall contain more than fourteen per centum (14%) of alcohol by volume, and this act is not intended to apply to, or regulate, the possession, sale, manufacture or transportation of beer, wines or ales containing a lower alcoholic content than above specified, and whenever the term alcoholic beverages is used in this act, it shall be construed as defined in this section.

(b) Auditorium, as used in this act, is defined to be and to mean an auditorium owned and operated by a municipal corporation or other governmental unit, corporation, partnership, fraternal or patriotic organization.

(c) Board, as used in this act, is defined to be and to mean the Mecklenburg County Board of Alcoholic Control.

(d) Social Establishment, as used in this act, is defined to be and to mean a corporation or association organized and operated solely for objects of a social, recreational, patriotic, or fraternal nature, with duly elected officers or directors, which requires an application for membership and a minimum ten-day waiting period to attain membership, with minimum dues or charges to members of ten dollars (\$10.00) per quarter year, which maintains a current membership list with the names and addresses of all members in good standing, and which is the owner, lessee, or occupant of premises upon which it regularly maintains and operates a dining room for the sale to its club members, and their authorized guests, of full meals cooked, prepared and served on the premises, which dining room has at least 50 seats.

(e) Convention Center, as used in this act is defined to be and to mean a structure or structures generally used for meetings and conventions.

(f) Mixed Beverage, as used in this act, is defined to be and to mean a drink composed in whole or in part of alcoholic beverages having an alcoholic content of more than fourteen per centum (14%) by volume and served to an individual in a sealed miniature container which shall contain one and six-tenths ounces of alcoholic

beverage; the miniature container must be purchased and consumed on premises licensed under this act, and shall be served with seal unbroken to the individual purchaser on the licensed premises as authorized in this act. The licensee shall mix the drink after the sealed miniature container has been served to the purchaser.

(g) Person, as used in this act, is defined to be and to mean any natural person, municipal corporation, corporation, partnership, or other governmental unit, fraternal or patriotic form of business organization.

(h) Restaurant, as used in this act, is defined to be and to mean any establishment which regularly maintains and operates a dining room for the sale to customers of full meals cooked, prepared and served on the premises, which dining room has at least 50 seats; the word "restaurant", when subsequently used in this act also includes a "social establishment", as defined in this section.

(i) Store, as used in this act, is defined to be and to mean a store established for the sale of alcoholic beverages pursuant to Article 3, Chapter 18 of the General Statutes of North Carolina, or any similar store established pursuant to any special act of the General Assembly.

Sec. 2. Purposes. – It is the purpose and intent of this act to establish a system to control the consumption of alcoholic beverages in places other than private residences by licensing certain persons to sell alcoholic beverages for consumption upon their premises in such a manner as to insure, as far as possible, the proper control and administration of such consumption and sales under a uniform system in Mecklenburg County. It is recognized that due to varying social and cultural differences within the State, the control of alcoholic beverages is not susceptible to a uniform system of control throughout all counties of the State. In particular, Mecklenburg County, located near the center of two states and the mid-point of the Piedmont region, has the State's largest population of 354,656. The County encompasses the State's largest city of 241,178 people. The State's largest urbanized County is a nucleus of industrial, transportation and communication centers. The City of Charlotte serves as a major trading area for the 2 million people in a 75-mile radius as well as many other business, educational and recreational communicants.

Sec. 3. The Mecklenburg County Board of Alcoholic Control is hereby authorized and directed to promulgate a comprehensive plan for the administration, sale, and enforcement of mixed beverages by the drink in the County. The Board shall have full authority, subject to and not in conflict with the provisions of this act, to adopt rules and regulations in the plan as to the qualifications of premises and persons to be licensed, grounds for denial, suspension or revocation of license, hearing and appeal procedures, and such other matters as the Board deems necessary or advisable to carry out the intent of this act, and for the regulation, control, and sale of mixed beverages, and the administration and enforcement of its plan: Provided, all purchases by licensees in the County shall be made from stores in the County, and the State Board of Alcoholic Control shall continue to exercise its statutory authority as to purchasing, warehousing, storage, distribution, and withdrawal of alcoholic beverages by the County Board.

Prior to September 15, 1971, the Comprehensive Plan shall be adopted and filed with the Clerk of Superior Court in Mecklenburg County, and published in a

newspaper with County-wide circulation, after first having been submitted to and approved by the Chairman of the State Board of Alcoholic Control, or his administrative successor.

Sec. 4. Thereafter the Mecklenburg County Board of Elections shall submit to the voters of the County, as soon as practicable, the question of whether mixed beverages by the drink under the Comprehensive Plan adopted by the County Board of Alcoholic Control shall be permitted in the County. Two issues shall be submitted on one ballot as follows:

Issue No. 1

☐ FOR mixed beverages by the drink and the Comprehensive Plan.

☐ AGAINST mixed beverages by the drink and the Comprehensive Plan."

Issue No. 2.

☐ FOR 'brown-bagging' if the mixed beverages issue is passed.

☐ AGAINST 'brown-bagging' if the mixed beverages issue is passed."

The County Board of Elections shall give at least 20 days' notice prior to the date on which the registration books are closed. The election shall be conducted under the same statutes, rules and regulations applicable to general elections.

Sec. 5. If a majority of the votes cast be "FOR" Issue No. 1 and "FOR" Issue No. 2, then mixed beverages by the drink and "brown-bagging" under this act shall be legal in the County.

If a majority of the votes cast be "FOR" Issue No. 1 and "AGAINST" Issue No. 2, then mixed beverages by the drink shall be legal in the County, but it shall be unlawful to "brown-bag" in the County as authorized by general law of the State.

If a majority of the votes cast be "AGAINST" Issue No. 1, and "AGAINST" Issue No. 2, then mixed beverages by the drink shall be unlawful in the County, but "brown-bagging" shall continue to be legal in the County notwithstanding the unfavorable vote on Issue No. 2.

Notwithstanding the approval of both Issues 1 and 2, no person, as defined in this act, shall possess both a brown bag license and a mixed beverage license for the same premises at the same time.

Subsequent elections may be held under this act, but no election shall be held within one year of the last election.

"Brown-bagging" as used in this act shall be construed as referring only to the possession and consumption of alcoholic beverages as presently authorized in G.S. 18-51(3), (4)b. and G.S. 18-51(5), or as said provisions may be amended or rewritten by the 1971 General Assembly.

Sec. 6. After approval of the Comprehensive Plan by the voters of the County, its provisions shall become operative 60 days from the date of such general election and shall not be changed by the County Board of Alcoholic Control; however, the Board shall have full authority to adopt additional or supplemental rules and regulations, with the approval of the Chairman of the State Board of Alcoholic Control or his administrative successor, to carry out the intent of this act. Provided, that any

additional rules and regulations adopted by the Board shall become effective on the tenth day after a certified copy has been filed in the office of the Clerk of Superior Court of the County.

Sec. 7. If and when mixed beverages by the drink under the Comprehensive Plan and this act shall have become effective as hereinbefore provided, the County Board of Alcoholic Control may grant Mixed Beverage Licenses, which licenses may be granted only to:

(a) persons operating a restaurant with a seating capacity at tables for not less than 50 persons and whose gross receipts from the sale of full meals cooked, prepared and served on the premises and non-alcoholic beverages served on the premises shall, after issuance of such license, exceed its gross receipts from the sale of alcoholic beverages. Such license shall authorize the licensee to sell and serve mixed beverages for consumption in rooms on the premises of such restaurants specified in such license. If the restaurant is located on the premises of and operated by a hotel or motel with not less than 40 permanent bedrooms where food and beverage service is customarily provided by the restaurant in bedrooms and other private rooms of such hotel or motel, such license shall also authorize the licensee to sell and serve mixed beverages for consumption in such bedrooms and other private rooms. If the restaurant is located on the premises of and operated by a private, non-profit social establishment exclusively for its members and their authorized guests, such license shall also authorize the licensee to sell and serve mixed beverages for consumption on the premises of such social establishment specified in such license. No such license shall be granted with respect to a restaurant which does not have a Grade A rating pursuant to Article 5 of Chapter 72 of the General Statutes of North Carolina, and any such license which has been granted shall be automatically suspended, without action by the Board, during any period when such restaurant does not have a Grade A rating.

(b) persons operating an auditorium or convention center with a seating capacity at tables for not less than 50 persons and whose gross receipts from the sale of meals cooked, prepared and served on the premises, and from meals served on the premises, and from non-alcoholic beverages served on the premises shall, after issuance of such license, exceed its gross receipts from the sale of alcoholic beverages. Such license shall authorize the licensee to sell and serve mixed beverages for consumption in rooms on the premises of such auditoriums or convention centers specified in such license. Any meals served, but not cooked and prepared on the premises of, the licensee, shall be provided by a restaurant having a Grade A rating pursuant to Article 5 of Chapter 72 of the General Statutes of North Carolina, and it shall be a violation of this act for the licensee to serve on the premises meals cooked or prepared by a restaurant which does not have such a Grade A rating.

Sec. 8. The right of any person licensed under this act to sell or serve mixed beverages shall extend to such licensee and to all persons regularly employed by such licensee for the purpose of selling and serving such mixed beverages on the premises designated in such license, and such licensee shall be liable for a violation of the provisions of this act, or any regulation of the Board promulgated hereunder, committed on the premises by such employees.

Sec. 9. Mixed beverages may be sold and consumed on the licensed premises during the hours that it is lawful to sell and consume malt beverages in accordance with provisions of Chapter 18 (or after its effective date, in accordance with provisions of Chapter 18A).

Sec. 10. All licensees under this act shall keep such records concerning the purchase of alcoholic beverages, the sale of mixed beverages, and the sale of full meals and non-alcoholic beverages, as may be prescribed by the Board to enable it to enforce the provisions of this act. All such records shall be open for inspection by the Board or its authorized representatives at all times.

Sec. 11. The Board shall annually review the operations of each establishment holding a Mixed Beverage License to determine whether during the preceding license year the gross receipts from the sale of full meals and non-alcoholic beverages at such establishment were less than the gross receipts from the sale thereof of alcoholic beverages and mixed beverages, and if so, the license issued to the person operating such establishment shall be revoked and no new license shall be granted to such person with respect to such establishment or to any other person at such establishment for at least one (1) year from the date of such revocation. For the purposes of this act, "non-alcoholic beverage" shall not be deemed to include any beverage, ice, water, or other mixers served with an alcoholic beverage.

Sec. 12. It is the intent of this act that all licenses granted under this act are privilege licenses only and are not issued as a matter of right. Licensees under this act may retain such licenses only upon strict compliance with the provisions of this act and with the rules or regulations adopted by the Board under this act. The Board may refuse to grant, and may revoke or suspend, licenses applied for or granted pursuant to this act, for violations of this act or of rules or regulations of the Board. The Board, in its discretion and with the consent of the licensee, may impose a fine of not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000) upon a licensee for each violation of this act or of the rules or regulations of the Board in lieu of a revocation or suspension of a license.

Sec. 13. No licensee under this act, nor any agent or employee of such licensee shall:

- (a) sell or serve any alcoholic beverage other than as authorized by law, or
- (b) sell or serve any alcoholic beverage to an intoxicated person, or
- (c) sell any authorized alcoholic beverage to any person or at any place except as authorized by law, or
- (d) allow at the place described in his license the consumption of alcoholic beverages in violation of this act, or
- (e) keep at the place described in his license any alcoholic beverage other than those which he is authorized to sell under licenses issued to him by the Board, or
- (f) misrepresent the brand of any alcoholic beverage sold or offered for sale, keep any alcoholic beverage otherwise than in the bottle or container in which it was purchased by him, refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper with the contents of any bottle or container of alcoholic beverage, or

(g) sell or serve any brand of alcoholic beverage which is not the same as that ordered by the purchaser thereof without first advising such purchaser of the difference, or

(h) knowingly remove or obliterate any label, mark or stamp affixed to any bottle or container of alcoholic beverage offered for sale or deliver or sell the contents of any bottles or containers from which the label, mark or stamp has been removed or obliterated, or

(i) employ, as a waiter or waitress serving mixed beverages, a person less than 21 years of age in or about that portion of the licensed establishment used for the sale and consumption of alcoholic beverages, or

(j) sell or serve mixed beverages to any person under 21 years of age, or

(k) knowingly allow any immoral, lewd or indecent conduct, or profane language, or obscene literature, pictures or materials on the licensed premises, or

(l) consume or allow the consumption by an employee, who is engaged in serving mixed beverages, of any alcoholic beverage, while on duty, or

(m) deliver to a consumer an original bottle of an alcoholic beverage purchased under such license with the seal unbroken, or

(n) be intoxicated while on duty or employ an intoxicated person on the licensed premises, or

(o) conceal any sale or consumption of alcoholic beverages, or

(p) fail or refuse to make samples of alcoholic beverages available to the Board upon request or obstruct agents of the Board in the discharge of their duties, or

(q) store alcoholic beverages purchased under the license in any unauthorized place, or remove any such alcoholic beverages from the premises, or

(r) knowingly employ in the licensed business any person who has been convicted as a prostitute, homosexual, panderer, gambler, habitual law violator, or user of or peddler of narcotics, or

(s) keep on the licensed premises any prohibited gambling or gaming device, machine or apparatus, or

(t) advertise the sale of alcoholic beverages on or off the licensed premises other than as permitted by the Board, or

(u) dispose of empty bottles and containers except in accordance with rules and regulations of the Board, or

(v) in the case of a social establishment, refuse to make available the current membership list to agents of the Board upon request.

Sec. 14. All alcoholic beverages sold as mixed beverages in establishments licensed under this act shall be purchased from a store located in Mecklenburg County. All such alcoholic beverages shall be purchased in containers containing one and six-tenths ounces and at the time of such purchase the store shall affix to each container a special sticker, which shall be prepared by the Board and distributed to such stores, showing that the alcoholic beverages in the container have been purchased by the licensee pursuant to this act, and further showing that there has been paid the tax imposed by Section 15 of this act. The licensee shall have the right to transport such

alcoholic beverages, in the containers in which they were purchased and with the seals thereof unbroken from the store to the place of business of the licensee.

Sec. 15. (a) Upon any purchase of alcoholic beverages for sale pursuant to this act, the licensee, in addition to the total price that would otherwise be due, shall pay to the store the sum of five dollars (\$5.00) per gallon, which sum shall not be subject to any tax levied under Chapter 18. The entire proceeds of the additional sum herein required to be paid and collected shall be paid monthly into the General Fund of the County, and a report of such collections and payments shall be made on or before the 15th of each succeeding month to the State Board of Alcoholic Control on forms or reports prescribed and furnished by said Board.

(b) The Board, upon the issuance by the Board of a license pursuant to this act, shall collect from the licensee, annually, a license fee, which shall not be subject to any tax levied under Chapter 18, and such fees shall be collected and disposed of in the same manner as provided for the additional sum set forth in subsection (a) above, which license fee shall be determined upon the following basis: five dollars (\$5.00) per seat for all seats to and including one hundred (100); an additional two dollars and fifty cents (\$2.50) per seat for all seats over and above one hundred (100) to and including two hundred (200); an additional one dollar and twenty-five cents (\$1.25) per seat for all seats over and above two hundred (200) to and including three hundred (300); an additional one dollar (\$1.00) per seat for all seats over and above three hundred (300) to and including five hundred (500); and an additional fifty cents (50¢) per seat for all seats over and above five hundred (500). For the purposes of this section, a "seat" is defined to be and to mean a seat located in a room which is utilized for the service of full meals on all or substantially all days when meals are served by the establishment, and does not include a seat not located in such a room, nor a seat located in any room in which the licensee agrees with the Board not to serve mixed beverages and which room is specifically excluded from the license. No city, town or other governmental unit shall require the payment, by any licensee, of any license or privilege tax for carrying on the activities authorized by the license.

Sec. 16. Every establishment holding a license under the provisions of this act shall be subject to inspection by law enforcement officers of the Board, the State Board of Alcoholic Control, or any county or city law enforcement officers who shall enforce the provisions of this act and who shall report to the County Board of Alcoholic Control any violations or apparent violations of the provisions of this act or any of the rules and regulations promulgated by the County Board of Alcoholic Control pursuant thereto, as provided in Sections 3 and 6.

Sec. 17. Any person who violates any of the provisions of this act, or any rules or regulations promulgated by the Board pursuant thereto, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine or by imprisonment, or by both fine and imprisonment, in the discretion of the court. If any licensee is convicted of the violation of any of the provisions of this act, or any of the rules or regulations promulgated pursuant thereto, the court in which such conviction occurs is empowered to, and shall, immediately declare the license revoked, and notify

the Board accordingly, and no license shall thereafter be granted to the same persons within a period of one (1) year from the date of the conviction.

Sec. 18. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 19. This act shall not be construed as repealing or modifying any provision of Chapter 18 of the General Statutes or the authority of the State Board of Alcoholic Control relating to those beverages defined in G.S. 18-64 and G.S. 18-60, except to the extent necessary to implement the provisions of this act. The State Board of Alcoholic Control shall exercise no authority over the County Board of Alcoholic Control in the exercise of its power and authority to adopt rules and regulations for carrying out the intent of this act.

Sec. 20. In the event of any conflict between the provisions of this act and any existing laws and clauses of laws, the provisions of this act shall control.

Sec. 21. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 21st day of June, 1971.